

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.3355 OF 2004

IN
SUIT NO.3281 OF 2004

Vatanakurussi K. Viswanathan ... Plaintiff

V/s.

Kvaerner Powergas India Ltd. & Ors. ... Defendants

Mr.Rohit Kapadia with Mr.J.P. Sen and Mr.Chirag H.
Mody i/b M/s.RMG Law Associates for Plaintiff
Mr.Janak Dwarkadas with Ms.Madhavi Diwan i/b Udwadia
& Udeshi for Defendant Nos.1 to 4
Mr.Shyam Diwan with A.G. Damle and Mr.Sanjay Gawde and
Ms.Preeti Balwani for Defendant Nos.5, 6 and 7

CORAM: **SMT.NISHITA MHATRE, J.**

DATED: **JUNE 23, 2006**

P.C.:

. The Suit has been filed for a declaration that the Plaintiff is a beneficiary of the DPG Staff Education Benefit Trust, DPG Staff Medical Benefit Trust, DPG Staff General Benefit Trust and DPG Staff Recreation Benefit Trust (for short, hereinafter referred to as 'the aforesaid trusts') during his lifetime. Certain other reliefs have also been claimed including a decree against Defendant Nos.2 and 4 who are trustees of the Trusts to pay an amount of Rs.8,70,000/- together with interest to the Plaintiff.

2. The present Motion has been taken out by the Plaintiff for the appointment of the Court Receiver in respect of the aforesaid Trusts. An injunction is sought restraining the Defendant Nos.2 to 4 from applying the income and funds of the Trusts for objects other than those stipulated in the Trusts. A further

direction is sought against the Trustees to deposit the amounts paid by the Trusts from its inception, alongwith interest thereon @ 18% per annum. Inspection of copies of the Trust deeds of the aforesaid trusts is also sought.

3. The Plaintiff was employed with the Defendant No.1 Company upto 1996, when he resigned. It appears that in the year 1985, the company set up Trusts for the benefits of its employees. These benefits were extended to the Plaintiff during the period of his service when he became eligible upto 1996 when the plaintiff resigned from service. Till the year 2004, the plaintiff had no grievance against the trustees of the aforesaid trusts, that is Defendant Nos.2, 3 and 4. It appears that only after the former Chairman of the company informed the Plaintiff of certain proceedings adopted by him and another Director before this Court with respect to their claims as beneficiaries under the Trusts established by the Company for the benefit of Indian Directors that the plaintiff became aware of his rights under the aforesaid trusts. The plaintiff contends that in view of the definition of the term "beneficiaries" under the aforesaid trusts, he is entitled to the relief claimed in the Notice of Motion. The Plaintiff contends that since he was a beneficiary under the aforesaid Trusts while in service upto 1996 he continued to be a beneficiary even after he had resigned from service. The plaintiff alleges mismanagement of the Trusts by the

trustees as they had breached their obligations under the terms of the aforesaid trusts. According to the Plaintiff, the distribution of the benefits from the funds of the aforesaid trusts have been made purely on an adhoc basis, without applications being made by the beneficiaries. Distribution of the benefits has no correlation with the objects stipulated in the trust deeds, according to the plaintiff.

4. The Defendants have in their reply to the Motion contended that the suit itself is barred by the law of limitation. The plaintiff is guilty of gross and unexplained delay and laches since he had not initiated any steps against the trust after resigning from service in 1996. The present suit has been filed in 2004 and therefore no relief ought to be granted to the plaintiff in this Motion. The defendants have relied on certain definitions in the trust deeds. They have also pointed out that the objects of the trusts do not permit the interpretation of the term "beneficiaries" in the manner suggested by the Plaintiff. According to them, once a person who was a beneficiary ceases to be in employment, he cannot continue to be a beneficiary during his lifetime. The defendant Nos.5, 6 and 7 are currently employed with the Defendant No.1 company. These defendants were joined as party defendants in their representative capacity, pursuant to the order passed on a Chamber Summons filed by the present employees. According to these defendants, the Trusts are

established only for the purpose of giving relief to the present employees and not to those who had ceased to be in employment. They contend that the trusts were established in order to provide financial assistance to the present employees in view of spiralling prices of essential commodities and transportation. They contend that the term "beneficiaries" as defined in each of the trust deeds cannot mean that all persons who were in employment of Defendant No.1 company at some point or the other and were eligible to be beneficiaries would continue to be beneficiaries during their lifetime. According to these defendants if such an interpretation is placed on the term "beneficiaries", the present employees would be deprived of the benefits which they are entitled to under the trust deeds. Therefore, these defendants have prayed for dismissal of the Motion.

5. In order assess the merits of the rival contentions it would be necessary to set out a few definitions from the trust deeds. The definitions contained in the trust deed of DPG Staff Education Benefit Trust are paramateria with the definitions contained in the DPG Staff Medical Benefit Trust, DPG Staff General Benefit Trust and DPG Staff Recreation Benefit Trust. The term "beneficiaries" is defined in clause 2(ii) of the DPG Staff Education Benefit Trust thus:

(ii) 'BENEFICIARIES' mean the employees in the Company as on the date of execution of this

TRUST and who may be employed hereinafter, in the category of employees with a basic salary of not less than Rs.2000 per month and with a minimum service of aggregate 10 years with Davy Powergas India Private Limited and/or Powergas Services (India) Private Limited on the first day of April in any year and who are not shareholders of the Company, provided that if any person employed in the company is found to be guilty of misconduct or moral turpitude he shall not be entitled to be a beneficiary or thenceforth cease to be the beneficiary under this TRUST as the case may be.

The term "employee" is defined to mean any person in permanent employment of the employer. Clause 3 deals with the duration of the trust and reads as follows:

3. DURATION OF THE TRUST:

(i) The duration of the TRUST created hereby shall be for a period of 18 years from the date of its execution or upto the end of the life time of the last of its present beneficiaries now living as on the date of execution of this TRUST whichever is longer, or

(ii) The TRUST shall however be determined on passing of an order or an effective resolution for winding up or liquidation of the Company, unless such winding up be for the purposes of amalgamation or reconstruction of the Company, whichever event takes place earlier, or

(iii) Notwithstanding the provisions in (i) and/or (ii) above the Trust hereof may be determined at any time hereafter the date of execution of this Trust but prior to the events mentioned in cl. (i) and (ii) herein above with the unanimous consent desire and by a resolution passed to that effect by the TRUSTEES.

Clause 5 (iii) spells out the objects of the trust. A perusal of these objects indicates that they are for the benefit of employees and their families. In the case of DPG Staff General Benefit Trust, the objects inter alia include acquisition by purchase or otherwise, lodging,

accommodation in hill stations & holiday resorts for the enjoyment of employees; providing vehicles for transportation of the employees at the holiday resorts during their leave period; to provide for hospital treatment and medical expenses; to give scholarships and education grants for the employees and their families; to provide library or sports facilities to the employees; to acquire and maintain recreational facilities for the benefits of employees particularly for their mental relaxation; to provide relief to employees affected by natural calamities and to provide generally for the welfare of the employees.

The objects of DPG Staff Recreation Benefit Trust are more or less similar. An additional object in this Trust is to provide educational facilities for establishing and promoting an arts centre, schools, academies, colleges, vidyapeeths, etc. for the benefits of the employees and to provide scholarship and freeships to deserving employees for prosecuting higher studies or training.

The objects of the DPG Staff medical Benefit Trust are again similar to the DPG Staff General Benefit Trust. However, an additional clause regarding reimbursement of actual medical expenses is provided. The other objects are to further the medical benefits available to the employees.

6. The term "beneficiaries" as defined under the aforesaid four Trust deeds includes an employee employed in the company on the date of the execution of the trust deed or who may be employed after the execution of the trust deed. However, there is a further qualification that such an employee should draw a basic salary of not less than Rs.2000 per month and ought to have a minimum service of 10 years in the aggregate with Davy Powergas India Private Limited and/or Power Gas Services Indian Private Limited on the first day of April in any year. Such an employee would fail to qualify as a beneficiary if he is a shareholder of the Company or he has been found guilty of misconduct or moral turpitude. The employee ceases to be a beneficiary on the happening of the aforesaid contingencies. The term "employee" has been defined to mean a person in permanent employment. Therefore, employees employed on a contract basis or on a temporary basis would not qualify to be beneficiaries although they may draw a basic salary of more than Rs.2000/- and may be employed for more than 10 years. A bare reading of the definition of "beneficiaries" and "employees" together, makes it obvious that only persons in current employment would be entitled to the benefits of the trusts. A person who has ceased to in employment because of resignation, in my opinion, would not be entitled, prima facie, to the benefits of the Trusts. This is borne out from the recitals of the trust deeds where it is stipulated that the settlor, in effect the company, "desires to continue to seek, secure and ensure

the support, co-operation and loyal services of its employees in the interest of the promotion and progress of its business". Certain welfare measures were decided to be taken up by the Settlor and with a view to promote these welfare measures it was resolved to create a benefit trust for the staff and employees. In my view, a beneficiary does not continue to remain a beneficiary during his lifetime. He ceases to be a beneficiary once his employment is discontinued. The definition of term "beneficiaries" indicates that if a person who was a beneficiary acquires shares of the company he cannot continue to derive benefits of the trust as a beneficiary. Similarly, a permanent employee who was eligible to be a beneficiary ceases to be one if he has been found guilty of misconduct or moral turpitude. Therefore, the definition itself contemplates that a person does not continue to be a beneficiary necessarily during his lifetime.

7. The submission of the learned Counsel for the Plaintiff, that the definition of the term "beneficiaries" must be read to include a person who had ceased to be in employment, cannot be accepted. The learned Counsel relied on Clause 3 which deals with the duration of the trust to support his argument that a person who became a beneficiary when the trust was settled would continue to be one during his lifetime. The learned Counsel points out the judgment of Rebello, J. in the case of *M.R. Menon & anr. v/s. Kvaerner*

Powergas India Ltd. (Notice of Motion 3943 of 1999 in Suit No.6987 of 1999). In this case, Rebello, J. was considering the trusts known as the DPG Benefit Trust and another Trust for the benefit of Directors of the Defendant No.1 company. While interpreting the definition of beneficiaries, the learned Judge came to the conclusion that directors who had retired would also be entitled to continue as beneficiaries. While considering this judgment, it must be borne in mind that the definition of the term "beneficiaries" in the Trust deeds considered by the learned Judge was different from the definition contained in the trust deeds before me. The term "beneficiaries" as defined in those trust deeds applied to the category of Indian Directors. Those Directors found guilty of misconduct or moral turpitude were not entitled to continue as beneficiaries. It is clarified in the definition contained in those trust deeds that a person would continue to be a beneficiary notwithstanding his retirement from the services of the company. The learned Judge held that a proper reading of the clauses could not lend support to the contention that only those in employment were entitled to the benefit but not those who had retired. Such a construction would mean, according to the learned Judge, that those employees who had contributed to the company and had retired before the trust was extinguished or dissolved would not be able to avail of the benefits of the trust. The learned Judge interpreted the clause to mean that a beneficiary would cover retired directors.

What had been clarified by the last sentence in the definition was amply clear from the definition itself according to the learned Judge. It is further observed that once a beneficiary, an employee would continue to be a beneficiary till the dissolution or extinguishment of the trust. However, it must be borne in mind that in that case the learned Judge was considering whether the assets of the trust, which had been extinguished, could be appropriated by the trustees. It is in this context that the learned Judge came to the conclusion that the beneficiaries would include those who had retired. In the present case, the definitions of the terms "beneficiaries" & "employee" the object clauses do not lend support to the interpretation placed by the plaintiff on the trust deed. Prima facie, it cannot be said that a person who had resigned from the employment should be treated as a beneficiary. The possibility of a person joining the Company's competitor in the business after his resignation cannot be ruled out. Further in the present case, the employee i.e., the Plaintiff had not retired as in the case before Rebello, J., but had voluntarily resigned. It would in my opinion be a travesty of justice to accept that a person who resigns from service, willingly, continues to be a beneficiary.

8. The plain language of the Trust deed does not support the interpretation placed by the plaintiff on the terms "beneficiaries" and "employee". In my view,

prima facie, the plaintiff has no right to the reliefs claimed in the suit much less to any interim relief in the Motion. Apart from this, the interpretation placed by the defendants on the terms and clauses contained in the trust deeds for well over 20 years has not been called in question. The plaintiff did not bother to approach the Court for redressal of his grievance immediately after he resigned in 1996. It is obvious that the plaintiff has approached this Court only after the order of Rebello, J. in *M.R. Menon & anr. v/s. Kvaerner Powergas India Ltd.* (supra).

9. The learned Counsel for the Defendants urge that while interpreting the documents i.e., the trust deeds if it is found that there is any ambiguity, contemporaneous minutes which have been maintained while settling the trusts must be considered. These minutes have been filed alongwith affidavit of Defendant No.2 dated 21.10.2005. He points out the case of *Fuzhakkal Kuttappu v/s. C.Bhargavi & Ors., AIR 1977 SC 105*, wherein the Apex Court was considering a construction and interpretation of a particular document. The Apex Court observed that it is always necessary to find out the intention of the party executing the document. This intention can be gathered from the recitals and the terms in the entire document as also from surrounding circumstances. In my opinion there is no ambiguity in the document. However, in order to leave no doubt the intention of the settlor could be considered. These

minutes indicate that the trusts were set up in order to maintain a cordial employer-employee relationship and to help the employees tide over their financial burdens. The purpose for setting up the trusts mentioned in the minutes is to help the employees "to develop a sort of belongingness to the company". Therefore, in the present case the minutes of the meeting of the Directors held on 12.2.1985 also indicate the intention of the settlor was to create a trust for the benefit of employees who had not ceased to be in service because of resignation.

10. Apart from this, the interpretation placed on clause 3 regarding the duration of the trust to mean that the beneficiary would continue to be a beneficiary during his lifetime or till the trust is dissolved cannot be accepted. In the case of *Sahebzada Mohammad Kamgarh Shah v/s. Jagdish Chandra Deo Dhabal Deb & Ors.*, AIR 1960 SC 953, the Apex Court has held that the intention of the parties to a document has to be gathered by the words used by the parties themselves. The Apex Court observed that where there is an ambiguity in a particular document it is the duty of the Court to look at all parts of the document to ascertain what the parties really intended. The Court observed that a principle had been evolved while interpreting such document that a clear disposition by an earlier clause would not be allowed to be cut down by later words. The earlier clause must in such circumstances prevail.

Clause 3 therefore cannot override the definitions contained in clause 2.

11. Clause 3 must be read in the context that there is a "rule against perpetuity". The rule is contained in section 14 of the Transfer of Property Act and section 114 of the Indian Succession Act. A settlor of a trust while ensuring the rule against perpetuity is not breached can always select a life or lives in order to extend the period of perpetuity of the trust. The life or lives selected by the settlor may have no relationship or connection with the trust or the objectives of the trust. The perpetuity rule, therefore, requires a future interest to vest within the period of perpetuity and also must stipulate the maximum period during which such interest may be enjoyed. Therefore, the duration clause cannot override the definition clause. The terms contained in the definition clause must be given their correct meaning and weightage while construing the document. Therefore, the submission of the learned Counsel for the Plaintiff cannot be accepted.

12. Assuming the plaintiff had made out a case that he is a beneficiary as defined under the Trust, in my opinion, the prayer sought in the Notice of Motion cannot be granted. Except for a bald statement made in the plaint that the funds and benefits were being distributed on an adhoc basis to the beneficiaries,

there is no material on record to show that either the funds of the trust were being wasted or there was mismanagement or misconduct on the part of the trustees.

13. It is true that there are no rules framed under the trust deeds for the distribution of the funds of the trust. The defendants ought to ensure that such rules are framed . However, that by itself would not indicate that the trust funds were being misused. There is no material on record to take such a view.

14. Notice of Motion, therefore, dismissed.